IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22077 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DR MAHENDRABHAI R TIWARI
Versus
THE DISTRICT PANCHAYAT AND ANOTHER

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Appearance :
MR AD OZA for the Petitioner
Mr Neeraj Soni, Assistant Government Pleader for Respondents

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 03/09/2007

ORAL JUDGMENT

Rule. Mr Neeraj Soni, learned AGP waives service of Rule for the respondents. At the request of the learned counsel for the parties, the

matter is taken up for final hearing today.

2 The petitioner has approached this Court to challenge order dated 5th August 2007 passed by respondent No.2 whereby he has exercised the powers under Section 20(3) of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and has suspended the registration of the clinic of the petitioner with immediate effect. It is the say of the petitioner that he is having a clinic and a nursing home which is essentially run by his wife, Dr Urmilaben Tiwari in the city of Vadodara. It is his say that respondent No.2 without affording to him any opportunity of hearing or without issuing any show-cause notice passed order dated 5th August 2007 on the ground that some time in the year 2003-04 the petitioner's wife, Dr Urmilaben Tiwari did sonography on one Sunitaben, wife of Rajeshbhai to ascertain the sex of the child in the womb and thereby she has committed the offence under the provisions of Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. In view of the same the impugned order has been passed, which is a common order against five doctors including the present petitioner and the registration has been cancelled.

3 I have heard Mr AD Oza, learned advocate for the petitioner and Mr Neeraj Soni, learned AGP for the respondent. It is submitted by Mr Oza that the impugned order is bad in law and is in violation of the principles of natural justice since the petitioner has not been served with the notice required under sub-section (1) of Section 20 of the Act. It is his submission that the alleged incident is stated to have taken place in the year 2000. The impugned action is taken more than seven years thereafter and that too without hearing the petitioner. He has referred to the table given in the impugned order and drawn my attention to column 6 thereof wherein it is stated that the incident had taken place

some time in the year 2002 or 2004 and has submitted that it is not the correct fact because it is the statement of the complainant – Sunitaben that she was examined in the year 2000 and that is also stated by respondent No.2. He draws my attention to order dated 2.08.2007 whereby the respondent authority has ordered enquiry and in that order also it is stated that examination of Sunitaben was done in the year 2000. It is therefore submitted by him that the clinic of the petitioner, namely, Laxmi Maternity Nursing Home was started in the year 2002 and this could not have been done in the year 2000. He has, therefore, submitted that the impugned order is passed without application of mind. As against that, Mr Neeraj Soni has submitted that in accordance with the provisions of Section 20(3) respondent No.2 is within his bounds to pass the impugned order without issuing notice to the petitioner. It is his submission that when the authority finds that it is expedient and in public interest it can pass such order without any delay and notice is not required to be issued. He has also submitted that there is alternative remedy available to the petitioner by way of appeal and on that ground alone this petition is not required to be entertained.

4 I have given careful consideration to the submissions of the learned counsel for the parties. Section 20 of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 reads as under:-

> "20. Cancellation or suspension of Registration. (1) The Appropriate Authority may suo motu or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.
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> (2) If, after giving a reasonable opportunity of being heard to

the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in subsections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1)."

5 Sub-section (3) of Section 20 of the Act requires recording of reasons why the Authority thought it fit not to issue notice and suspend registration with immediate effect. The impugned order though purported to have been passed under subsection (3) of Section 20 does not contain any reason as to why respondent No.3 thought it fit to suspend the registration with immediate effect without even issuing notice to the petitioner. It may be noted here that the incident took place way back in the year 2000. The order is passed on 5th August 2007, that is, seven years after the alleged incident. The order also does not indicate that the petitioner or his wife had been violating the provisions of the Act very often and there was need to suspend the registration. Except the allegation regarding the sonography of Sunitha, no other incident does not seem to have been brought to the notice of respondent No.2. In view of the same, it clearly appears that respondent No.2 has not complied with the mandatory provisions of

subsection (1) and subsection (3) of Section 20 of the Act. Therefore, this order is bad in law. Further, it also violates the principles of natural justice. Hence, it is required to be quashed and set aside. However, this order will not come in the way of the respondents, if they so wish, in issuing fresh notice and initiating fresh proceedings against the petitioner after complying with the mandatory requirements. Rule is made absolute.

(Akshay H Mehta, J.)

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